IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 5709 of 1998

Between:

The Executive Engineer Vamsadhara Project
Gotta Barraige, Hiramanadalam,
Srikakulam Dist.

...PETITIONER

AND

1 Muddada Simmayya S/o late Mohalingam
Kondaragolu Post, Hiramandalam,
Srikakulam Dist.
2 The Presiding Officer Industrial Tribunal-cum-Labour Court,
Visakhapatnam

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records pertaining to I.D.No.98/88 dt: 30-9-1992 on the file of the 2nd respondent and quash the same as illegal and opposed to I.D.Act

Counsel for the Petitioner: GP FOR IRRIGATION & COMM AREA DEV.

Counsel for the Respondent No.1 : MR.V.SUDHAKAR REDDY

Counsel for the Respondent No.2 : G.P.FOR LABOUR

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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 20541 of 1998

Between:

Muddana Simmayya S/o Mohalingam
R/o Kondaragolu (V), Hiramandalam (M),
Srikakulam Dist.

.... PETITIONER

AND

1 The Industrial Tribunal-cum-Labour Court Visakhapatnam,

rep. by Chairman & Presiding Officer
2 The Executive Engineer, Vamsadhara Project Gotta Barraige
Hiramandalam, Srikakulam Dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Certiorari calling for the records pertaining to I.D.No.98/88 dt: 30-9-96 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam, the 1st respondent herein, and declare, so far as it denying the back wages and other attendant benefits including continuity of service to the petitioner as illegal, contrary to law, consequently direct the 2nd respondent to pay full back wages to the petitioner with all other attendant benefits and continuity of service

Counsel for the Petitioner: MR.V.SUDHAKAR REDDY

Counsel for the Respondent No.1: G.P. FOR LABOUR
Counsel for the Respondent No.2: GP FOR IRRIGATION & COMM AREA DEV.

The Court made the following :

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COMMON ORDER:

WRIT PETITION NO:20541 OF 1998:

This writ petition is directed against an award dated 30.09.1996, passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, in I.D.No.98/88.

According to the petitioner, he joined as Man Mazdoor in the second respondent Project in the month of January, 1970, and worked there continuously till 1.12.1983. On 1.12.1983, he was removed from service orally without giving any notice and without paying any compensation, as required under Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act"). However, his juniors were retained in service, in violation of Section 25-G of the Act. Aggrieved by the same, he raised a dispute in I.D.No.98/1988, before the Industrial Tribunal-cum-Labour Court, under Section 2-A (2) of the Act. In the said I.D., the management filed a counter denying the allegations made by the petitioner. The said I.D. was disposed of by an award dated 3.01.1989, without granting any relief to the petitioner/workman. Aggrieved by the same, the petitioner filed W.P.No.16357 of 1989, and the same was disposed of by this Court on 24.07.1991, setting aside the award in I.D.No.98/88, dated 3.1.1989, and remanding the matter to the Labour Court for reconsideration. After the matter was remanded, the said I.D. was finally disposed of on 30.09.1996, granting relief of reinstatement in favour of the petitioner/workman, but continuity of service and back wages were denied. Aggrieved by the same, the present writ petition is filed by the petitioner/workman insofar as denial of back wages and continuity of service is concerned.

I have gone through the award passed by the Labour Court. As noticed above, I.D.No.98/88 was earlier disposed of on 3.1.1989, and when the matter was challenged before this Court in W.P.No.16357 of 1989, this Court by an order dated 24.7.1991, set aside the same and remanded the matter to the Labour Court for

reconsideration. On remand to the Labour Court, WWs.1 to 5 were examined on behalf of the workman and MW-1 was examined on behalf of the management. However, no documents were marked on either side. After an elaborate consideration of the entire evidence on record, the Labour Court came to the conclusion that the evidence of the witnesses establishes that the petitioner/workman worked as Man Mazdoor in the second respondent project continuously, on casual basis, from 1970 to 1983 i.e. till his removal.

While considering the evidence of MW.1, the Labour Court observed that though MW-1 deposed that the workman did not work continuously for a period of 240 days in a calendar year, and he worked only for 7 days in 1972 and now and then during the years 1975-76, on daily wages. Later, he worked for some days in the year 1981-82, but he did not work at any time during the years 1970, 1971, 1977 to 1980. It was further observed that the petitioner/workman worked only on daily-wage basis in exigency of work, but in the cross-examination of MW-1, he admitted that he has no personal knowledge about the employment of the petitioner/workman in the Sub-division, and further admitted that Hiramandalam Division was formed in October, 1970, and he worked there from 1971 to 1977. With regard to the records, MW-1 admitted that they used to maintain muster rolls for the workers and obtain their signatures at the time of payment of wages, and wages were being paid once in a month. MW-1 further admitted that the petitioner was also paid wages once in a month, and the muster rolls reveal the dates on which the workman was employed. When the matter was remanded to the Labour Court, MW-1 was recalled and he admitted in his further cross-examination that they did not produce the records relating to the entries for the period from 1.1.1970 to 1.12.1983, and that he cannot say what happened to those records. Therefore, in the light of the above evidence, the Labour Court came to the conclusion that the management failed to produce the relevant records for the entire period, for which the petitioner/workman worked, and no proper explanation was forthcoming for the same.

The Labour Court further noticed that when MW-1 admitted in his evidence that he prepared the counter affidavit basing on the registers, it was incumbent on the part of the management to preserve and produce those records before the Court to disprove the allegations made by the petitioner that he worked continuously for a certain period. Non-production of the register and the records, like muster rolls etc. for the entire period, would indicate that the respondent has deliberately either

destroyed those records or suppressed them in order to deprive the benefits to the workman. Further, it was also noticed by the Labour Court that MW-1 admitted in his cross-examination that they have not sent any reply to the legal notice dated 17.02.1987 sent by the petitioner/workman, demanding his reinstatement. Thus, the Labour Court came to the conclusion that the petitioner/workman worked for more than 240 days (preceding the date of removal from service) and as such, the management violated the statutory provisions of Section 25-F of the Act, and therefore, the removal of the petitioner was illegal and contrary to law. However, while holding so, the Labour Court found that the petitioner joined as Man Mazdoor on daily-wage basis and he was not entitled for continuity of service and back wages, inasmuch as he did not pursue his legal remedies within a reasonable time i.e. for a period of five years. It was further observed that the petitioner is the person eking out his livelihood by doing labour work and that it is highly probable that after his removal, he was working as such for earning his livelihood, and basing on the same, denied continuity of service and back wages.

Learned counsel for the respondents strenuously contends that absolutely no evidence was produced before the Court to show that the petitioner worked continuously for a period of 240 days in the second respondent project and that there was relationship of employer and employee between the management and the petitioner/workman. She also further submits that as the very dispute was raised after a lapse of more than five years, the Labour Court ought to have dismissed the claim of the petitioner being belated, but on the other hand, the Labour Court granted some relief to the petitioner, merely because of the failure on the part of the management in producing the records. As the records are old records, it was very difficult for the management to trace them and produce before the Court.

The Labour Court has given cogent reasons for coming to the conclusion that the services of the petitioner were terminated without following the provisions of Section 25-F of the Act. In fact, it was for the management to produce the records to show that the petitioner never worked in the respondent-management continuously for a period of 240 days, preceding the date of his termination from service. Though MW-1 in his cross-examination admitted that the very counter affidavit filed before the Labour Court was prepared basing on the records, such records were never produced before the Labour Court in spite of the fact that the matter was remanded by this Court once, and MW-1 was recalled to give his evidence. Under those

circumstances, the finding of the Labour Court that the management violated the statutory provisions of Section 25-F of the Act cannot be found fault. Insofar as the further relief claimed by the petitioner/workman is concerned, the Labour Court taking into consideration the fact that the petitioner approached the Labour Court belatedly, i.e. after about five years of his removal from service, denied back wages as well as the continuity of service.

Once the Labour Court comes to the conclusion that Section 25-F of the Act was violated by the management, granting the relief of continuity of service and back wages is automatic, but that all depends upon the circumstances of each case. This is a case where admittedly the petitioner was a Man Mazdoor, working on daily-wage basis, and a person worked as a Man Mazdoor cannot be said to have kept idle for all those days when the litigation was going on before the Labour Court. Therefore, the labour Court has rightly denied the back wages to the petitioner, which cannot be interfered with by this Court. However, the petitioner is entitled for continuity of service on par with his juniors, who worked as Man Mazdoors and continued as such, as on the date of his termination from service. Therefore, the award of the Labour Court is liable to be modified to that extent, and be read as follows:-

“The petitioner/workman is entitled for reinstatement, with continuity of service all through, but without any back wages.”

The writ petition is allowed to the extent indicated above.

WRIT PETITION NO.5709 OF 1998

For the very same reasons recorded in W.P.No.20541 of 1998, this writ petition is liable to dismissed, and is accordingly dismissed.

It may be noticed that the management has obtained stay of reinstatement of the petitioner. In view of the above findings, it is desirable that the petitioner shall be reinstated into service within a period of one month from the date of receipt of a copy of this order.

W.P.No.5709 of 1998 is dismissed and W.P.No.20541 of 1998 is partly allowed. There shall be no order as to costs in both the writ petitions.

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10th November, 2004.

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the tenth day of November, 2004.

ASST.REGISTRAR

SECTION OFFICER

To

1. The Executive Engineer, Vamsadhara Project,
Gotta Barraige, Hiramanadalam,
Srikakulam District.

2. The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Visakhapatnam. (with records)

3. Two C.Cs to the Govt.Pleader for Irrigation and Comm.Area

Development, High Court buildings, Hyderabad (OUT).

4. Two C.Cs to the Govt.Pleader for Labour,

High Court buildings, Hyderabad (OUT).

5. Two C.D.copies